IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO.163 OF 1998

Chandrakant Ganapati Gore .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Manoj i/b. S.D.Dharmadhikari for applicant

Mr.Y.M.Nakhwa, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st November 2006.

P.C.

. After this Revision Application was placed for hearing and final disposal and argued for some time, my attention was invited by the

learned Advocate appearing for applicant to the fact that the applicant has been convicted of offence punishable under section 279, 304A, 338 I.P.C. read with section 116 of Motor Vehicles Act. The trial court has convicted the applicant and sentenced him to suffer R.I. for one month and to pay fine of Rs.200/-. He is also convicted under the Motor Vehicles Act. The appeal preferred by the applicant before the Sessions Court, Sangli being Criminal Appeal No.72 of 1993 was decided on 4th April 1998. The appeal is partly allowed and while confirming the conviction, the sentence is modified.

2. Learned Sessions Judge has observed in para 7 of the order that the appeal was heard ex parte because applicant's advocate was absent on the date of argument. The matter was heard and adjourned for delivering judgement. Learned Advocate for the applicant appeared at that stage and sought an adjournment which was granted but

on the adjourned date as well, Advocate for applicant was absent. In such circumstances, criminal appeal was decided ex parte.

3. Without going into the larger controversy and in the peculiar facts of this case when the applicant is enlarged on bail the criminal application is allowed by setting aside the judgement and order of the lower appellate court. In my view, the Lower Appellate Court proceeded without the applicant having any opportunity to satisfy the Appellate Court that he is innocent. The Appellate Court proceeded in the absence of Appellant's Advocate which has prejudiced him. An appeal in a criminal case is a guarantee for the life and liberty of the convict and deprivation thereof should be an exception.

4. Criminal Appeal No.72 of 193 shall stand restored to file for decision afresh on merits and in accordance with law. This order is passed

because the applicant has pointed out to me that he has been enlarged on bail by this Court and therefore, opportunity be given to him to demonstrate that the order of trial court is erroneous and requires to be set aside. The applicant would have such liberty provided he deposits in the Trial Court a sum of Rs.10,000/- within a period of four weeks from today. The said amount, irrespective of the outcome of the appeal, shall be paid over to the family of the victim Nalini. All contentions of both sides are expressly kept open. Criminal Appeal to be decided afresh without being influenced by the earlier order and within a period of eight weeks from the date of receipt of copy of this order/judgement. Rule is made absolute accordingly. R. & P. to be sent forthwith.

(S.C.Dharmadhikari, J)